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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|-------------------------|------------------|
| 09/988,352 | 11/19/2001 | Norman R. Pallas | 39-21 (51844)F MTC 6801 | 8761 |

321 7590 09/24/2003

SENNIGER POWERS LEAVITT AND ROEDEL
ONE METROPOLITAN SQUARE
16TH FLOOR
ST LOUIS, MO 63102

EXAMINER

CLARDY, S

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|


1616

DATE MAILED: 09/24/2003

10

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

| | | |
|--------------------------------------|-------------------------------------|---|
| Application No. 09/988,352 | Applicant(s) Pallas et al | |
| Examiner S. Mark Clardy | Art Unit 1616 |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Jul 16, 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-125 is/are pending in the application.
(cont, # 6 below)
- 4a) Of the above, claim(s) 2-6, 10-17, 26-30, 42-46, 50-57, 61-64, 66, 70-73 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
101, 105-107, 116-118
- 6) ☒ Claim(s) 1, 7-9, 18-25, 31-41, 47-49, 58-60, 65, 67-69, 74-76, 81, 84-86, 95-97 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☒ Certified copies of the priority documents have been received in Application No. 09/926,521.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3, 5, 7, 9 6) ☒ Other: 77-80, 82, 83, 87-94, 98-100, 102-104, 108-115, 119-125

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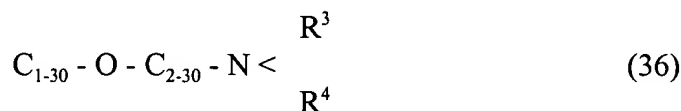
Claims 1-125 are pending in this application which is a continuation-in-part of SN 09/926,521, which was filed under 35 USC 371 as the national stage application of PCT/US01/16550, filed May 21, 2001, which claims the benefit under 35 USC 119(e) of US Provisional Applications No. 60/206,628 (May 24, 2000), 60/205,524 (May 19, 2000), 60/273,234 (March 2, 2001), and 60/274,368 (March 8, 2001).

Applicants' claims are drawn to aqueous pesticidal microemulsion compositions comprising a water soluble pesticide, surfactant, and a compound which affects cell membrane permeability

The claims have been grouped for restriction under 35 U.S.C. 121 as follows:

- I. Claims 1, 3, 4, 10-15, 26, 28-30, 41-46, 50-55, 61-64, drawn to pesticidal compositions comprising a water soluble pesticide, water immiscible organic solvent, and surfactant, classified in class 514, subclass depending on the active agent.
- II. Claims 2, 5, 6, 16, 17, 27, 56, 57, 65, 66, 70-73, 77-83, 87-94, 98-104, 108-115, 119-125, drawn to herbicidal compositions, classified in class 504, subclass depending on the active agent.
- III. Claims 7-9, 18-25, 31-40, 47-49, 58-60, 67-69, 74-76, 84-86, 95-97, 105-107, 116-118, drawn to glyphosate compositions and methods of use, classified in class 504, subclass 206.

In the response filed June 26, 2003, applicants elected the invention of Group III, glyphosate compositions and methods of use, and the species comprising the potassium salt of glyphosate and the etheramine surfactant of formula 36:



wherein R^3 and R^4 are H, C_{1-30} , or $-(\text{C}_{2-4}\text{-O})_{1-50} - \text{H}/\text{C}_{1-4}$.

Claims 7-9, 18-25, 31-40, 47-49, 58-60, 67-69, 74-76, 84-86, 95-97, 105-107, 116-118, and claims 1, 41, 65, 81, and 101 (from which they depend) have been examined only insofar as they

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read on the elected species. Claims 2-6, 10-17, 26-30, 42-46, 50-57, 61-64, 66, 70-73, 77-80, 82, 83, 87-94, 98-100, 102-104, 108-115, and 119-125 have been withdrawn from consideration as being drawn to non-elected inventions/species.

Again, upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 7-9, 18-25, 31-41, 47-49, 58-60, 65, 67-69, 74-76, 81, 84-86, 95-97, 101, 105-107, and 116-118 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combined teachings of Jimoh (US 6,369,001) and Wright et al (US 5,750,468).

Jimoh teaches microemulsion herbicidal compositions comprising a water soluble herbicide, an oil soluble graminicide (cyclohexenone or aryloxyphenoxypropionate), a water immiscible organic solvent, an emulsifying system comprising a tertiary amine surfactant, a nonionic dispersant, and an optional chloride stabilizer (abstract). Advantages of microemulsions include their ability to remain homogeneous without agitation for long periods of time; thus they may be handled much like a simple aqueous solution (col 4, lines 33-40). The water soluble herbicide is preferably a salt of glyphosate, with the potassium salt being one of those disclosed (col 3, lines 20-34; col 9, lines

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41-56); the examples use the IPA (isopropylamine) or MEA (monoethanolamine) salts. Several conventional organic solvents are disclosed in column 8. The tertiary amine surfactants are disclosed as also having the ability to enhance the herbicidal effectiveness of the glyphosate composition (col 10, lines 24-33). The tertiary amines are preferably selected from polyoxyethylene (2-20) tertiary alkylamines and alkyletheramines, with illustrative alkyletheramines being those disclosed in Wright et al, discussed next (col 10, lines 53-66).

Wright et al teach glyphosate salt compositions comprising alkyletheramines, alkylether ammonium salts, or alkyletheramine oxides (abstract). The glyphosate salt may be any of the conventional salts including the potassium salt (col 5, lines 1-16). The tertiary alkyletheramine surfactants encompass those claimed herein; see col 6, lines 11-28.

One of ordinary skill in the art would be motivated to combine these references because the tertiary alkyletheramines of Wright et al are explicitly disclose in Jimoh as being included in the tertiary amine surfactants contemplated therein.

Thus it would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made to have combined the potassium salt of glyphosate, an organic solvent, and a polyalkoxylated alkyletheramine surfactant because each of these components are disclosed in the microemulsion compositions of Jimoh, which further contain an additional oil soluble herbicide.

No unobvious or unexpected results are noted; no claim is allowed.

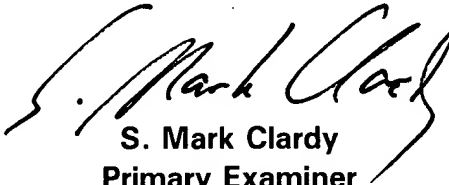
This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made

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in order for the examiner to consider the applicability of 35 U.S.C. 103c and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to S. Mark Clardy whose telephone number is (703) 308-4550.


S. Mark Clardy
Primary Examiner
AU 1616

September 22, 2003